

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 282 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

K M SHAH CHARITABLE TRUST THRO' MANAGING TRUSTEE

Versus

STATE OF GUJARAT

Appearance:

MR B P Tanna with Mr AMIT M PANCHAL for Petitioner
Mr B Y Mankad, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/04/2000

CAV. JUDGEMENT

Rule.

Petitioner is the original plaintiff before the
Civil Court at Vadodara in Civil Suit No.364 of 2000.

Respondent is the defendant in the said suit. The respondent submitted an application before the learned District Judge at Vadodara placed at Annexure 'A' stating that the aforesaid Civil Suit of the petitioner was pending before Mr C H Patel, 6th Civil Judge (SD) at Vadodara. The respondent also submitted before the learned District Judge that a Civil Suit No.1134/99 was filed by certain other students involving similar set of facts. That the said Civil Suit was pending before the Civil Judge (SD), Smt. M D Bhatt. That the learned Judge considered certain decisions of the Supreme Court and disposed of the interim relief application Exh.5. That the present Civil Suit No.364 of 2000 contains the same set of facts and, therefore, the said matter being Civil Suit No.364 of 2000 may be transferred from the Court of Shri C H Patel to the Court of Smt. M D Bhatt.

2. After hearing the parties, the learned District Judge found that the facts of the two matters are similar and, therefore, Civil Suit No.364 of 2000 was ordered to be transferred from file of Mr C H Patel, Civil Judge (SD), Vadodara to the file of learned Second Joint Civil Judge (SD), Vadodara.

3. Feeling aggrieved by the said judgment and order, the petitioner has preferred this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'the Code').

4. Notice was issued to the respondent. I have heard Mr B P Tanna appearing for Mr Amit Panchal for the petitioner and Mr B Y Mankad, learned AGP for the respondent. I have also perused the papers. It is very clear that the learned Second Joint Judge (SD) had decided the interim relief application in favour of the State in Civil Suit No.1134/99. I am told that the facts of Civil Suit No.1134/99 and the facts of Civil Suit No.364/2000 are similar. Therefore, the respondent requested the learned District Judge to transfer Civil Suit No.364/2000 to the file of learned second Joint Civil Judge (SD).

5. Let us take it that the facts in the two suits are similar. Here the position is that the learned second Joint Civil Judge (SD) has already decided the interim relief application Exh.5 in favour of the respondent. This would mean that the said application was submitted under Section 24 of the Code by the respondent with a view that the same decision can be obtained from the same Judge in the subsequently instituted Civil Suit i.e. Civil Suit No.364/2000. This

is not possible and permissible under the law. Had there been two or more suits pending before one Judge and if he decides the interim relief application in one matter, the parties against whom such matter has been disposed of, cannot agitate that the remaining matters may be transferred elsewhere. Similarly, if similar matters are pending before another court, then one of the two parties cannot claim that those matters be transferred to the Judge who had earlier disposed of the interim relief application in his favour. If the order is passed for transfer of matters in the manner in which the present matter is dealt with, then the party can choose the Judge before whom he would like to litigate. This is not at all permissible. No allegation has been made against the learned Judge before whom Civil Suit No.364/2000 is pending. Simply because the earlier interim relief application was in favour of the respondent in Civil Suit No.1134/99, it does not mean that all similar suits should be subsequently transferred to the same Judge in order to obtain the same or similar orders in all such matters. Section 24 of the Code cannot be put to service for that purpose.

6. There are number of decisions saying that the powers conferred under Section 24 of the Code cannot be lightly used by the Court. Such principles can be gathered from the decision in the case of Combined Enterprises & Ors. v Vimlaben Naginbhai Patel, 26 (2) GLR 950. Similar principles can be gathered from Rajkot Cancer Society v. Municipal Corporation, Rajkot, 1987 (2) GLR 981. In the case of Indian Overseas Bank, Madras v. Chemical Construction Co. & Ors, AIR 1979 SC 1514, the facts have been narrated which indicate that the two suits relating to payment to be made to discounting bank under agreement to a party under "Bills Rediscounting Scheme" were pending in District Judge's Court in M.P. as well as in Madras High Court. There the issues in both the suits were common and payment to discounting bank to be made in Madras. Considering the aforesaid and since the evidence had not been commenced, the suit in M.P. Court was ordered to be transferred to Madras High Court. In para 18 of the said decision, the Apex Court has observed that although the exercise of discretionary power cannot be imprisoned within the strait-jacket of any cast iron formula uniformly applicable to all situations, yet certain broad propositions as to what may may constitute a ground for transfer can be deduced from judicial decisions. One of them is that where two suits raising common questions of facts and laws between parties common to both the suits, then the two suits pending in two different courts can be tried together in

the interest of justice.

7. Here the facts are little different. The second joint Civil Judge (SD) has decided the interim relief application in favour of the respondent. Therefore, the respondent desired that the subsequently instituted suit be transferred to the very Judge. This would naturally be with a view to get favourable order in the subsequently instituted suit also. This is not permissible.

8. In the aforesaid view of the matter, I am of the view that by transferring Civil Suit from one Court to another in exercise of powers under Section 24 of the Code, the learned District Judge has overlooked the position that the Judge to whom the matter was being transferred, had earlier decided the interim relief application in favour of the respondent and that is why the respondent wanted that the second suit also be heard by the same Judge and, therefore, it is objectionable. Such orders would naturally result in miscarriage of justice and, therefore, interference of this Court is necessary under Section 115 of the Code. At the same time, if the matter is transferred after disposal of interim relief application and before the commencement of trial in one of the two suits, then such transfer may not be treated to be illegal, if it is done under Section 24 of the Code. Therefore, it will be open to the District Judge to reconsider the issue after disposal of interim relief application. So far as the present case is concerned, it is not just and proper or legal to transfer the matter to the Court which earlier disposed of the interim relief application in favour of the respondent. To that extent the order of the learned District Judge must be treated to be illegal and without jurisdiction. It has resulted into serious injustice and miscarriage of justice.

In view of the aforesaid, this Revision Application is allowed. The order passed by the learned District Judge is quashed and set aside and the said Transfer Application No.54 of 2000 filed before the District Judge is ordered to be dismissed. Rule made absolute accordingly. No order as to costs.

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msp.